

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHWESTERN DIVISION**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Case No. 10-5044-01-CR-SW-RED
)
JASON HILL,)
)
Defendant.)

ORDER

Now before the Court is Defendant Jason Hill's Motion to Suppress Evidence (Doc. 38), Government's Response in Opposition to Defendant's Motion to Suppress Evidence (Doc. 40), the Report and Recommendation of United States Magistrate Judge (Doc. 42), and Defendant's Objections to the Magistrate's Recommendations issued Prior to the Alloted (sic) Time Limit for Defendant's Reply and Without a Hearing (Doc. 43).

The Court notes that Defendant's objections to the Report and Recommendation concerns the fact that the Magistrate Judge did not hold a hearing over the Motion to Suppress and also that the Magistrate Judge issued his opinion before Defendant could file a reply in support of his Motion to Suppress. However, the Court notes that Defendant's Motion to Suppress was filed more than *one and one-half years* out of time and Defendant did not seek leave of the Court to file his motion well outside the deadline. As such, the Court finds any complaint about the Magistrate Judge failing to allow him to file reply suggestions to be without merit. Moreover, the Court notes that evidentiary hearings on motions to suppress are not granted as a matter of course and "a hearing is unnecessary when it can be determined without a hearing that suppression is improper as a matter of law." *United States v. Losing*, 539 F.2d 1174, 1178 (1976). Defendant argued that the use of the

E-Phex software to search his computer was a warrantless search in violation of the Fourth Amendment to the United States Constitution and the Magistrate Judge determined that using the “peer to peer network site E-Phex, which [D]efendant had already elected to voluntarily share with other users,” (Report & Recommendation Doc. 42 p. 2) did not constitute a search under the Fourth Amendment as a matter of law. Therefore, the Court finds no error in the Magistrate Judge issuing his Report and Recommendation without holding an evidentiary hearing.

After careful and independent review of the parties’ submissions, this Court agrees with and **ADOPTS** the Report and Recommendation of United States Magistrate Judge (Doc. 42) in full. Defendant’s Motion to Suppress is **DENIED** (Doc. 38). Defendant’s Objections to the Report and Recommendation are **OVERRULED** (Doc. 43).

IT IS SO ORDERED.

DATED: July 9, 2012

/s/ Richard E. Dorr
RICHARD E. DORR, JUDGE
UNITED STATES DISTRICT COURT